HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 279 of 2006 (SS)

Harish Chandra Joshi s/o Sri Prakash Chandra Joshi, Assistant Accountant, Vikash Khand, Tharali, District Chamoli ..... Petitioner

Versus

1. State of Uttaranchal
2. Deputy Commissioner (Admn.) Rural Developments, Uttaranchal, District Pauri
3. Chief Development Officer, Chomoli ..... Respondents

Sri B.S. Negi, Advocate for the petitioner
Sri Harendra Belwal, Brief Holder for the respondents.

Dated: 4.3.2006

Hon'ble Rajesh Tandon J.

Heard Sri B.S. Negi, counsel for the petitioner and Sri Harendra Belwal for the respondents. Both the counsel have submitted that the writ petition be finally decided at the admission stage.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing his transfer order dated 31.1.2006.

Briefly stated the petitioner at present working as Assistant Accountant at Vikas Khand, Tharali, District Chamoli.

By the impugned order he has been transferred from District Chamoli to District Pauri Garhwal.

The main grievance of the petitioner is that his wife is also serving in Primary School, Tharali and he has also school going children. The petitioner has placed reliance on the State Government G.O. dated 5.1.1986, which provides that if the husband and wife both are Government employees, as much as possible, both of them be posted at one place. Further grievance of the petitioner is that his transfer has been made in mid session which is against the transfer policy of the government.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered if the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

It has been held by the Apex Court in the case Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is

passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Further the apex Court in State of U.P. v. Goberdhan LAl (2004) 11 SCC 402 has observed as under:

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

It is well settled that the transfer is an exigency of service. However option for the petitioner to approach the higher authorities is available and the petitioner is at liberty to approach the higher authority.

Liberty is, therefore, given to the petitioner to make representation to the appropriate higher authority within 15 days after receipt of the certified copy of this order, who shall decide the same within six weeks thereafter. The order of transfer shall remain in abeyance, so far as it relates to the petitioner only, for a period of two months.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

4.3.2006

Dhyani **Rajesh Tandon J.**